IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.726 OF 2003

Shama Shankar Kamble & Ors. ...Appellants

vs.

Hariba Krishna Kamble & Ors. ...Respondents

Mr.N.V.Bandiwadekar for the Appellants

CORAM: A.S.OKA,J.
DATE : JULY 10, 2007.

P.C.:

1. The Appellants are the original Defendants. A suit was filed by the Respondents for possession on the basis of title. The suit was dismissed by the trial court by accepting the plea of the Appellants that they have perfected their title to the suit property by adverse possession. The Appellate Court reversed the decree passed by the trial court and held that the Appellants have not established the plea of adverse possession. The Appellate Court therefore proceeded to pass a decree of possession.

2. The learned Advocate for the Appellants invited my attention to the paragraph 10 of the decision of the Appellate Court. He pointed out that the plea of adverse possession has been negatived on erroneous ground that there was no foundation for the said plea in the evidence of Laxman Kamble who was examined on behalf of the Appellants. The said Laxman is the fourth Appellant in this Appeal. He invited my

attention to the deposition of the said Laxman.

3. Perusal of paragraph 1 of the deposition shows that according to the case of the Appellants, Malu Kamble, the predecessor of the respondents gave the suit property to the Appellants as the owners in the year 1941 and since then the Appellants are in possession of the suit property as owners thereof. He stated that the Appellants are in possession of the suit property for last 50 years as owners and even during the lifetime of the said Malu, they were using the suit property and the said Malu did not complain about the said possession. The plea of the said Laxman in the evidence is that the said Malu gave the suit property to the Appellants as owners in the year 1941. So even according to the case of the said Laxman, entry of the Appellants in the suit property in the year 1941 is lawful with the consent of the said Malu i.e. the predecessor of the Respondents.

4. In view of the deposition of the said Laxman, the Appellate Court was right in holding that the plea of adverse possession was not established by the Appellants as their possession was at highest a permissive possession in law. No substantial question of law arises.

5. Second Appeal is dismissed with no order as to costs.

JUDGE